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BEFORE THE

SURFACE TRANSPORTATION BOARD

Ex Parte No. 706

PETITION OF UNION PACIFIC RAILROAD COMPANY TO INSTITUTE RULEMAKING TO ADOPT REPORTING REQUIREMENTS FOR POSITIVE TRAIN CONTROL

REPLY OF
PPG INDUSTRIES, INC.
IN OPPOSITION TO THE PETITION

PPG Industries, Inc. ("PPG") hereby submits this Reply in response to a Petition dated October 13, 2010 by the Union Pacific Railroad Company ("UP"), requesting the Board to institute a rulemaking proceeding to adopt reporting requirements for positive train control ("PTC").[1] PPG believes that UP's Petition should be denied since it is unnecessary and premature and because it focuses solely on PTC costs while ignoring the anticipated multiple benefits, including efficiency-enhancing benefits, of PTC.

However, in the event that the Board determines to initiate a rulemaking proceeding, then the Board should ensure that the proceeding is even-handed and not only encompasses reporting requirements for the increased capital and operating costs of PTC as requested by UP, but also develops reporting requirements to track the multiple benefits of PTC, including increased

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[1] UP's Petition was filed on October 13, 2010. Under the Board's rules, a reply to UP's Petition was due on November 2, 2010. To PPG's knowledge, two parties, The Fertilizer Institute and the Canadian Pacific Railway Company, filed a reply to UP's Petition on the due date, November 2. Another party, the Norfolk Southern Railway Company, filed a reply to UP's Petition on November 24, 2010, or twenty (20) days after the due date. PPG's reply is directed solely to the UP's original Petition. Since the Board has not yet acted on UP's Petition, no party is harmed by PPG's late-filed Reply. PPG respectfully requests the Board to accept this Reply and to consider it in deciding UP's Petition.

efficiencies on the lines in which PTC is installed as well as system-wide. UP's Petition inappropriately asks the Board to evaluate and measure only one-side of a two-sided equation. Thus, if the Board were to initiate a rulemaking on PTC (which it should not), then the Board must encompass PTC benefits in that proceeding in order to ensure a more balanced and accurate reporting approach then that proposed by UP.

I. IDENTITY AND INTEREST OF PPG

PPG is a diversified manufacturer of chemicals, protective coatings, glass and fiber glass with over 14,000 employees in the United States and more than 50 manufacturing, research and distribution facilities across the country. PPG also operates in more than 60 countries around the globe. Total sales in 2009 exceeded $12 billion. Almost half of these sales are in the U.S.

PPG's commodity chemicals segment produces chlor-alkali and derivatives including chlorine, liquid caustic soda, vinyl chloride monomer, ethylene dichloride, chlorinated solvents, hydrochloric acid, calcium hypochlorite, and other chemicals. Most of these products are sold directly to manufacturing companies in the chemical processing, plastics and rubber, paper, minerals, metals, and water treatment industries. PPG's North American chlor-alkali chemicals business operates three production facilities and employed over 1900 persons in 2010. Some of these products, such as chlorine, are classified as Toxic By Inhalation ("TIH") and are transported by rail. It is undisputed that rail transportation is the safest over-land method of transporting this commodity. Although PPG can ship chlorine to a limited extent by barge and to certain customers by pipeline, the vast majority of chlorine consumers cannot physically receive chlorine by barge or pipeline. Due to safety considerations, PPG does not ship chlorine by truck in North America.

PPG's chlorine rail shipments are encompassed by the requirements of the Rail Safety and Improvement Act of 2008, by which UP and other Class I railroads must install PTC by December 31, 2015 on all main lines used to transport TIHs.

II. UP'S PETITION SHOULD BE DENIED

In its Petition, UP notes that the Board is "currently evaluating whether to pursue a rulemaking that would address how to classify separately the costs of hazardous materials operations and refine URCS to better capture the costs of transporting hazardous materials operations." UP Petition, p. 3, fn.1. In Ex Parte 681, *Class I Railroad and Financial Reporting – Transportation of Hazardous Materials,* slip op. served January 5, 2009, the Board seeks comments on "whether and how it should update its accounting and financial reporting for Class I rail carriers and refine its Uniform Railroad Costing System (URCS) to better capture the operating cost of transporting hazardous materials." Ex Parte 681, slip op. at 1. Although UP argues that its current proposal is different from the Board's consideration of the issues in Ex Parte 681, UP Petition, p. 3, UP is mistaken. The Board's notice in Ex Parte 681 specifically indicated that the Board would review possible revisions to the Uniform System of Accounts ("USOA"). If the Board determines to make changes to the USOA to better capture the operating cost of transporting hazardous materials, it will necessarily have to determine how to change its reporting requirements to accommodate that change, including PTC costs. Thus, the subject matter of UP's Petition is already encompassed by the Board's proceeding in Ex Parte 681 and is therefore unnecessary.

Moreover, even if UP were correct that the issues in Ex Parte 681 do not encompass the issues in its Petition (which it is not), the Board should not initiate a proceeding to adopt new reporting requirements for PTC until it has determined in Ex Parte 681 that revisions to the

Uniform System of Accounts to reflect specific PTC costs are necessary or desirable. UP argues that information on expenditures for PTC-related financial and operating data could be lost if a rulemaking is not instituted, but given the size and nature of these expenditures, UP's concern is exaggerated. Moreover, UP's Petition inappropriately ignores the multiple benefits, including efficiency enhancing benefits of PTC implementation that would be likely to result in cost reductions. For all of these reasons, the Board should deny UP's Petition.

III. IF THE BOARD INITIATES A RULEMAKING ON REPORTING REQUIREMENTS FOR PTC COSTS, IT MUST BROADEN THE RULEMAKING TO INCLUDE REPORTING REQUIREMENTS ON THE BENEFITS THAT OCCUR FROM PTC IMPLEMENTATION

If the Board grants UP's Petition, it must broaden the scope of the PTC recording requirements to include all of the multiple benefits that will result from PTC implementation to avoid a lop-sided and misleading recording approach. In its Petition, UP indicates that the railroad industry, including UP, will be incurring "substantial costs to install PTC, and they will incur substantial costs to operate and maintain their PTC systems." UP Petition, p. 4. UP also argues that the costs of installation and operation of PTC will have a potential impact in regulatory proceedings. UP cited to the Board's conclusions in *U.S. Magnesium, L.L.C v. Union Pacific Railroad*, in which the Board rejected UP's effort to account for PTC costs because UP's actual PTC costs were uncertain and that the attribution of those costs to the traffic was too complex an issue to analyze in the context of a single rate case. *Id.* at 5, citing STB Docket No. 42114, slip op. at 17 (served January 27, 2010). UP demurs that its Petition is not asking the Board to decide "whether or how to use the data" regarding PTC. UP Petition, p. 3. However, it is most important to note that UP indicates that PTC costs should be separately captured because there is a "particular[]" issue as to "whether URCS *properly allocates* costs to TIH." UP Petition, p. 6 (emphasis added). UP also stated that "PTC costs will likely be an issue in any proceeding regarding the common carrier obligation to transport TIH.....and will continue to be an issue in rate cases....." *Id.* Thus, it is clear that UP has clear intentions as to "whether or how to use the data."

Despite UP's protestation that it is not asking the Board to decide whether or how to use the data, there is clearly no reason for UP to urge the Board to adopt "PTC versions" of various R-1 schedules, as the railroad requests, unless UP and/or other rail carriers were going to argue in future proceedings that PTC-related costs should be allocated to TIH traffic. But if this is the real object of UP's Petition, then, if the Board initiates a rulemaking proceeding, that proceeding must be broad enough to consider not only data needed to capture the *costs* of installing and operating PTC systems, but also data needed to capture the *benefits and efficiencies* of PTC systems.

Despite the studied surface simplicity of UP's Petition, these are not simple matters, as the Board well knows. In its Final Rule regarding PTC published in the Federal Register on January 15, 2010 (75 Fed. Reg. 2598), under Docket FRA 2008-0312, the Federal Railroad Administration ("FRA") concluded that the costs of installing and operating PTC would substantially outweigh the benefits. *See* 75 Fed. Reg. at 2684-2686. However, FRA *excluded* certain benefits because of uncertainties regarding whether and when such other benefits would accrue and the potential to achieve those benefits using alternative technologies at lower costs. 75 Fed. Reg. 2684. But, there is substantial controversy as to whether the FRA properly excluded those benefits. See, *e.g.*, Petition for Reconsideration submitted by the Chlorine Institute, March 16, 2010, attaching a report *Positive Train Control Benefits Analysis: Updated Statement of Total Benefits and Restatement of FRA Cost-Benefit Analysis Based on FRA Costs* *and Updated Benefits*, by L.E. Peabody & Associates, Inc., March 3, 2010.[2] Indeed, a significant portion of the benefits excluded by FRA were efficiency-enhancing benefits that would accrue directly to railroads. *Id.* Furthermore, those efficiency-enhancing benefits would accrue to railroads' transportation of goods by many shippers, not just TIH shippers, in the form of reduced costs brought about by greater efficiencies. The benefits included line capacity enhancements, dispatching efficiency gains, work order issue flexibility, locomotive diagnostics, and fuel savings. *See*, Peabody Report, pp. 7-10, 13-14, 27-28, and Attachment 1.

Accordingly, if the Board is going to require the reporting of PTC costs, it should also require the reporting of PTC benefits, especially those that accrue to rail carriers. Any future recording and potential allocation of such costs and benefits must be performed in an even-handed and accurate manner. If the costs of PTC were ever to be allocated solely to TIH shippers (which PPG does not support), then the benefits of PTC implementation must also be allocated to TIH shippers, even if those benefits would accrue to others. Otherwise, TIH shippers would bear unfairly a disproportionate share of the cost burden. Alternatively, if the Board initiates a rulemaking to consider reporting requirements related to the installation and operation of PTC systems, then that rulemaking should also consider reporting requirements that would record the benefits of PTC to rail carriers and the rail industry as a whole. This approach would also ensure a more comprehensive and accurate reporting system and avoid an unfair over-assignment of costs to one type of traffic.

[2] Indeed, as the Peabody Report noted, FRA *included* these benefits in prior studies of this matter. See Peabody Report, p. 1-2;see also, *Quantification of the Business Benefits of Positive Train Control*, Zeta-Tech Associates, March 15, 2004; *Benefits and Costs of Positive Train Control*, Federal Railroad Administration report to Congress, August 2004.

Respectfully submitted,

Karyn A. Booth

Karyn A. Booth
THOMPSON HINE LLP
1920 N Street, N.W.
Washington, DC 20036
202-331-8800

January 18, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have served on this 18th day of January, 2011, a copy of the foregoing Reply of PPG Industries, Inc. by first-class mail on:

Michael L. Rosenthal
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004

Karyn A. Booth

Karyn A Booth